

RECORD OF PROCEEDINGS

U.S. SMALL BUSINESS ADMINISTRATION  
ST. LOUIS, MO SIZE STANDARDS PUBLIC HEARING

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Florissant, Missouri

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William L. DeVries, CSR/CCR/RDR/CRR

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## A P P E A R A N C E S

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## Panel Members:

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1 (Whereupon the hearing commenced at 8:30  
2 a.m.)

3 MR. WHITAKER: I'd like to introduce the  
4 SBA regional administrator for Region VII, Mr. Sam  
5 Jones.

6 MR. JONES: Thank you, Lonnie. Thank you  
7 for coming this morning. We want to thank the St.  
8 Louis Community College network for hosting us here  
9 today, and why not give them a little plug as we  
10 start. On the tables outside are some pamphlets on  
11 their course offerings this summer. There's pretty  
12 good stuff in here.

13 They have one on understanding patents,  
14 trademarks, and copyrights. Two-hour session for  
15 twenty bucks. In law school you'd spend an entire  
16 semester and still come out not knowing anything about  
17 patents, trademarks, and copyrights. So it sounds  
18 like a bargain. So pick one of these up. If you  
19 can't benefit from these courses, perhaps people in  
20 your business can.

21 Welcome to the St. Louis Size Standards  
22 Hearing. I'm Sam Jones. I'm the regional  
23 administrator for SBA. My office is in Kansas City.  
24 I have responsibility for the states of Missouri,  
25 Iowa, Nebraska, and Kansas. I'm pleased to host

1 today's hearing here. This is a first in a series of  
2 I believe eleven hearings we will have around the  
3 country. So we're starting the ball rolling here in  
4 St. Louis.

5 The mission of SBA is to maintain and  
6 strengthen the nation's economy by aiding, counseling,  
7 assisting, and protecting the interests of small  
8 businesses and by helping families and businesses  
9 recover from national disasters.

10 I oversee the activities in Region VII that  
11 consist of not only our loan programs, where most  
12 people think of SBA, but also our partnerships with  
13 organizations that provide training, counseling to  
14 businesses, and our liaison to Small Business  
15 Innovation Research program that is run by Bill Simon  
16 here out of the Center for Emerging Technology over on  
17 Forest Park Avenue. Several other SCORE chapters, our  
18 volunteers there are organizations that we all deal  
19 with on a pretty consistent basis.

20 Size standards is a fundamental issue  
21 within SBA because it determines which businesses are  
22 eligible for SBA assistance, small business  
23 preferences on federal contracts, and small business  
24 assistance for many other federal programs and  
25 regulations. The purpose of today's hearing is to

1 hear from you on issues pertaining to size standards.  
2 In particular, on ways SBA may simplify size standards  
3 and other ideas to make size standards easier to  
4 understand and use.

5 The testimony presented in today's size  
6 standards, along with other comments we received to  
7 the December 2004 Advance Notice of Proposed  
8 Rulemaking, will be used to help SBA develop new  
9 proposals to further those objectives. We are also  
10 taking the opportunity at these hearings to seek the  
11 public's views on a question regarding the eligibility  
12 of businesses majority-owned by venture capital  
13 companies to participate in the Small Business  
14 Innovation Program.

15 On behalf of myself and Administrator  
16 Hector Barreto, we thank you for taking time out of  
17 your busy schedules to participate in this vitally  
18 important effort. We will now turn the hearing over  
19 to our moderator, Lonnie Whitaker, who will introduce  
20 the panelists and go over the ground rules for the  
21 hearing.

22 MR. WHITAKER: Thank you, Sam. And at our  
23 head table on our panel from right to left we have  
24 Dennis Melton. He's the acting district director for  
25 the St. Louis District Office. And to his left we

1 have Gary Jackson, the Assistant Administrator for  
2 Size Standards. He's here from Washington D.C. Next  
3 to him is Merry Bayer. She's the -- I'll get this  
4 right -- Procurement Center Representative for  
5 Metropolitan St. Louis, and she's housed right now in  
6 the St. Louis District Office. And then you've met  
7 Sam Jones. And our court reporter, Bill DeVries.

8 I'll go over the ground rules for the  
9 testimony this morning. As Sam indicated, this is a  
10 public hearing taken pursuant to the notice that was  
11 published in the Federal Register, May 13th, 2005  
12 concerning SBA's size standards. Your testimony will  
13 be recorded by the court reporter. When you get to  
14 the podium, be sure and state your name and  
15 organization for the record. The names will be called  
16 in the order listed on the registration docket that  
17 you received from Washington. If you're not present  
18 when called, your name will be called at the end.

19 Each presenter will be allowed five minutes  
20 for a normal presentation. I'll advise you when your  
21 time is up, and you should conclude at that time. If  
22 you need a few sentences to finish up, that's fine,  
23 but we want to stay as close to five minutes as  
24 possible, primarily because of uniformity. As Sam  
25 indicated, there are eleven separate hearings, and if

1 the people in Seattle get five minutes, the people in  
2 St. Louis should also get five minutes.

3 When you finish your presentation, give me  
4 a copy of your written testimony and any supplemental  
5 material that you wish to submit. Make sure your name  
6 and organization is on this material. Members of the  
7 panel may ask questions for purposes of clarification,  
8 but they're not here to take a position to agree or  
9 not agree with any position you might present. A  
10 discussion of the issues will be limited to size  
11 standards. Any unrelated matters will be stopped.

12 Members of the press are asked to identify  
13 themselves and see Rose Garland, who is sitting in the  
14 back row. Rose? And she will get you registered.  
15 Any press activities, including interviews with any of  
16 the panel members, should be coordinated through Rose.  
17 I ask you to please be courteous when other people are  
18 testifying, and turn off your pagers and cell phones.

19 And during -- we will have a break a little  
20 bit later on. The rest rooms are located as you go  
21 out the back door to your right and then almost  
22 immediate left. So we will proceed. Does anybody  
23 have any questions at this point? I'll start calling  
24 them out. George Dube. State your name and --

25 MR. DUBE: I'm George Dube, president of

1 MetaStable Instruments, Incorporated. Thank you for  
2 this opportunity to express my opinion on size  
3 standards for small businesses. Our small company has  
4 been awarded five Phase 1 SBIR awards from the Small  
5 Business Innovation Research program, two Phase 2  
6 awards, and one other six-figure government  
7 development contract.

8 We have a patent on a commercial product  
9 line based on one of those Phase 2 contracts. We have  
10 never had more than eight employees, so by anybody's  
11 standard we are a very small company. These  
12 government research and development contracts have  
13 kept our doors open while we try to increase our  
14 commercial sales enough to sustain us. We appreciate  
15 the SBIR program and are working hard to get a good  
16 return on the money the government has sent us through  
17 that highly competitive and worthwhile program. Today  
18 I address my company's specific concerns, but I  
19 believe our logic could be applied by the SBA to other  
20 concerns as well.

21 The many government regulations on  
22 businesses are established for noble causes, but the  
23 government appreciates that complying with them is  
24 proportionally a greater burden for small companies.  
25 To ease this burden, they often establish a threshold



1 on the number of employees or on the dollar value of  
2 the transaction. Companies or transactions below that  
3 threshold or size standard are not burdened by that  
4 regulation. For example, the threshold for mandatory  
5 workers' compensation insurance here in Missouri is  
6 five full-time employees. The threshold for being  
7 covered by the Federal Civil Rights Act of 1991 is  
8 fourteen employees, and for Titles I and V of the  
9 American with Disabilities Act of 1990, 25 employees.  
10 According to federal government figures, the average  
11 size of companies in the United States is twenty  
12 employees.

13 For manufacturing and many services, there  
14 are undeniable economies of scale that make large  
15 companies the more efficient supplier. Large  
16 companies employ fifty percent of the nation's  
17 employees, but deliver 75 percent of its products and  
18 services. They are more productive. The SBIR program  
19 was created to enhance our nation's benefits from the  
20 innovation that flourishes in small companies. For  
21 innovation there is no economy of scale. The founders  
22 of the SBIR program believed, as I do, that innovation  
23 is stifled in large companies, where "better" is often  
24 considered the enemy of "good enough."

25 When it comes to government regulations or

1 programs to help small businesses such as the SBIR  
2 program and small business set-asides, only companies  
3 smaller than the threshold are eligible for the  
4 program's advantages. These thresholds are generally  
5 larger than the regulatory thresholds. I believe they  
6 are in many cases too large.

7 For example, the threshold for the SBIR  
8 program is 500 employees. Other thresholds are based  
9 on the NAICS codes. For the two codes relevant to our  
10 company, the current standards, which happen to also  
11 be 500 employees, qualified 96 percent of all  
12 businesses as small businesses. 96 percent is hardly  
13 a select group. At 100 employees this figure would  
14 drop only slightly to 87 percent.

15 In the 1970s when I first entered the work  
16 force, the standard was fifty employees. I know of no  
17 change in economics that compelled or explains this  
18 tenfold increase to 500 employees. Interestingly,  
19 government statistics give no information on companies  
20 with more than 500 employees. So I'm left to wonder  
21 what prompted moving the standard to higher than 500.

22 I don't know why these thresholds have  
23 grown, but I have a theory. A common result of these  
24 differences between the thresholds for regulatory and  
25 beneficial purposes is to maximize the number of

1 companies involved. This also maximizes the size and  
2 influence of the bureaucracies overseeing these  
3 regulations. I submit this is a universal but  
4 undesirable tendency of bureaucracies. Controlling  
5 this tendency requires disciplined management and  
6 oversight, and I hope this hearing will contribute to  
7 that cause.

8           The Small Business Administration was or  
9 should've been set up to regulate and enhance the  
10 economic and social benefits flowing from America's  
11 innovative small businesses. Instead of concentrating  
12 on that assigned role, the SBA seems to be engaged in  
13 this common bureaucratic practice of growing. This  
14 desire to grow was made clear in the press release for  
15 the simplification of the size standards, which  
16 announced that by increasing the thresholds, more  
17 companies, possibly even ours, will become eligible  
18 for the advantages available only to the small  
19 companies.

20           Wanting to help many companies -- wanting  
21 to go help as many companies as possible may be a  
22 noble cause, but it should not be the SBA's cause.  
23 The SBA model should not be: "We help the largest  
24 small companies in the world." The SBA should take  
25 pride in saying good-bye to once small businesses that

1 have grown so much that they are no longer small.  
2 Instead of wishing these graduating businesses well in  
3 the world of big business, the SBA seems to want to  
4 raise the standard so that these businesses can stay  
5 in their bureaucracy in spite of the fact that they no  
6 longer need assistance, but will gladly take it at the  
7 expense of the smaller companies.

8 MR. WHITAKER: Mr. Dube, five minutes is  
9 up.

10 MR. DUBE: Okay. I urge our government to  
11 simplify the NAICS's based standards so that no more  
12 than eighty percent of the companies qualify as small.  
13 I urge our government to lower the size standards for  
14 the SBA program, and I oppose making any exceptions  
15 for venture capital loan companies. Thank you.

16 MR. WHITAKER: Thank you very much. Excuse  
17 me. Does the panel have any questions?

18 MR. JONES: Mr. Dube, could you leave us a  
19 copy of your testimony, please? Thank you.

20 MR. WHITAKER: Keith Guller.

21 MR. GULLER: My name is Keith Guller. I'm  
22 president and CEO of Essex Industries. Ladies and  
23 gentlemen, Essex has a proud history of being a small,  
24 privately-owned U.S. business that has served and  
25 continues to serve our nation in its critical

1 aerospace and defense requirements as well as our  
2 nation's commercial needs for liquid oxygen systems,  
3 rescue equipment, protected breathing equipment, smoke  
4 hoods, and aircraft military and naval assemblies for  
5 over 55 years. Our largest customers are the prime  
6 contractors and the U.S. government.

7           Until recently we were able to fulfill our  
8 customers requirements by retaining the services of  
9 less than 500 employees. This employment level  
10 satisfied the SBA requirements of nearly all of the  
11 NAICS codes we supplied. However, our customers today  
12 are demanding more of Essex. Customers are asking  
13 Essex to take on a large portion of the logistics  
14 responsibilities as they lean on their supply chains.  
15 We manage their inventories now. We have become their  
16 production control departments. This requires more  
17 resources and expertise on our end.

18           Customers have told us that Essex must  
19 develop a capability to move up the supply chain and  
20 become systems integrators. Otherwise, our products  
21 and assemblies will be purchased by other suppliers of  
22 our customers. This would put significant pressure on  
23 our ability to be profitable. This would hurt Essex  
24 that for more than 55 years has provided our  
25 communities with jobs and exemplary corporate

1     citizenships.

2             Customers are raising the performance bar.  
3     What earned Essex Boeing's gold rating or Lockheed's  
4     star supplier status ratings two years ago puts us in  
5     the red category today. This is forcing us to  
6     redesign the way we do business and add administrative  
7     resources. In order to better meet the increasing  
8     demands of the modern supply chain, Essex has been  
9     forced to exceed the 500 employee limit. We now  
10    employ a little less than 600 people. This makes  
11    Essex the smallest big business in our industry.

12            Without the incentives provided by our  
13    previous small business status, we fear for our  
14    successes in competing against the truly big  
15    companies. Our big company competitors have at their  
16    disposal so many more resources and contacts only  
17    poised to defeat Essex in contract competitions. It's  
18    clear that since the size standards for many of these  
19    manufacturing NAICS codes were set, the industry has  
20    changed. My father Harold Guller, Small Businessman  
21    of the Year in 1971 and SBA Hall of Famer spoke of  
22    these same issues at a SBA panel in Washington D.C. 35  
23    years ago.

24            As a member of the small business  
25    community, I urge you to take into account these

1 changing demands as the new supply chains consider and  
2 require us to potentially increasing the size  
3 standards of various NAICS codes. Specifically, if I  
4 may, 332420, liquid oxygen tank manufacturing.  
5 333999, gas generating machinery. 339112, inhalation  
6 therapy. 423850, service established equipment. And  
7 as well for the SBIR eligibility. Thank you very  
8 much.

9 MR. WHITAKER: Thank you, Mr. Guller. Does  
10 the panel have any questions?

11 MR. JACKSON: Mr. Guller, in terms of small  
12 business contracting, is most of your work through  
13 small business set-aside or subcontractors, large  
14 businesses?

15 MR. GULLER: Those specifically are within  
16 one division of our company. It's a wholly owned  
17 subsidiary, and that size of the business is seventy  
18 people, and we have always complied in the 500  
19 category. And as that company competes, they're  
20 competing against the larger, but they are a totally  
21 set, autocratic, independent company, the rest of our  
22 businesses. At most, if they -- they have as  
23 additional assistance 35 employees from the  
24 centralized offices of Essex, which are data  
25 processing and accounting, and then they are a group

1 of seventy competing against companies of a larger  
2 statute.

3 MR. JACKSON: Again, are they getting  
4 contracts through a set-aside type of private  
5 contracting level, or is this on the subcontracting  
6 level that you --

7 MR. GULLER: It's contracts on a set-aside  
8 basis. And it was specifically those categories that  
9 we have been provided. And if I might add, in many  
10 cases some of those categories have become -- the  
11 unfortunate situation, we're the sole small business  
12 and don't always have a second small business to  
13 qualify for contention on orders that we might lose.

14 MR. JACKSON: Thank you.

15 MR. GULLER: Thank you.

16 MR. WHITAKER: Thank you. Cary O'Brien.

17 MR. O'BRIEN: Good morning. I'm Cary  
18 O'Brien. I'm owner of Cary O'Brien's Design and Color  
19 Spa, a hair salon in St. Charles, Missouri. Currently  
20 serve as board of directors for The Salon Association,  
21 approximately 2700 members, 7500 salons, and about  
22 75,000 employees with our current base.

23 Thank you for the opportunity to comment on  
24 the issues that were presented in SBA's Advanced  
25 Notice of Public Rulemaking on small business size



1 standards. As an industry that is primarily comprised  
2 of small business and independent businesses, it is  
3 extremely important for the salon industry to maintain  
4 the existing level of eligibility for SBA programs and  
5 assistance.

6 In its Advanced Notice of Public  
7 Rulemaking, SBA stated its proposal to restructure its  
8 size standards as a way to simplify and make it easier  
9 in use of 69 FR 70197. While the application of size  
10 standard may be confusing for some businesses in the  
11 industry, it is not a problem in the salon industry.  
12 The current size -- or receipts-based size standards  
13 of six million in annual sales is extremely  
14 user-friendly and easy to apply. As such, I believe  
15 that the current system of size standards would  
16 preserve the existing simplification of the  
17 prospective of small business in the industry.

18 The salon industry is unique and should be  
19 considered separately. Defining characteristics of a  
20 salon industry is the fact that it is extremely  
21 labor-intensive, with its employees generating a  
22 relatively small amount of sales compared to most  
23 other sectors of the economy. According to data from  
24 the Census Bureau, the average receipts-per-employee  
25 ratio in the salon industry is less than 40,000 per

1 employee.

2 Include sales-per-employee information  
3 about your salon here. I have about 25 employees  
4 myself, gross sales of just under \$900,000. So  
5 changing it drastically would really put me out of  
6 business and expansion completely. As a result, I  
7 believe it is very important for the salon industry to  
8 be considered separately for the nonmanufacturing  
9 sectors if SBA chooses to go forward with the  
10 restructuring of size.

11 In its Advance Notice of the Public  
12 Rulemaking, SBA stated that it remains committed to  
13 modifying size standards in a manner to make it  
14 simpler -- simpler and easier, 69 FR 70197. For the  
15 reasons mentioned previously, I believe that a  
16 conversion to the employee-based size standards would  
17 in fact make the size standards more complicated for  
18 the salon industry.

19 Based on the unique characteristics of the  
20 salon industry, including the relatively low  
21 receipts-to-employee ratio and high proportion of  
22 part-time employees, I believe the current  
23 receipts-based size standards would be the most  
24 appropriate approach for the salon industry. As such,  
25 I respectfully recommend that no changes are made to

1 the size standards for the salon industry in which  
2 includes North American Industry Classification Codes  
3 812111 and so forth. Thank you.

4 MR. WHITAKER: Thank you. Any questions?  
5 Thank you very much. Christine Bierman.

6 MS. BIERMAN: Thank you for this  
7 opportunity. I have another meeting to go to. Trying  
8 to get me up there out of line.

9 My name is Christine Bierman. I'm CEO and  
10 founder of Colt Safety, Fire & Rescue located in St.  
11 Louis, Missouri. St. Louis County, Missouri. 2005  
12 marks our company's 25 year anniversary, something  
13 we're very, very proud of. Colt Safety warehouses and  
14 distributes industrial safety supplies and personal  
15 protective equipment. The size standard for my  
16 business is 100 employees, which I feel is a fair  
17 standard.

18 I am pleased to testify today on behalf of  
19 Women Impacting Public Policy, WIPP, a national  
20 bipartisan public policy organization representing  
21 more than 505,000 women in business and women business  
22 owners nationwide. We are particularly concerned  
23 about the restructuring of the SBA size standard and  
24 the effect that it will have on small businesses such  
25 as mine. I want to thank you and others from the SBA

1 for affording me this opportunity. By way of WIPP and  
2 many other women business enterprises, I personally  
3 take advantage of every opportunity to testify and to  
4 advocate for small, women, and diversity companies  
5 around this great nation.

6 Facts about women business owners. Small  
7 business is the engine that drives the American  
8 economy. Women business enterprises represent 38  
9 percent of all majority-owned privately held U.S.  
10 firms; generate 3.7 trillion dollars in revenues to  
11 the U.S. economy. We're going at twice the rate of  
12 all U.S. firms. We stay in business longer than all  
13 other U.S. firms.

14 WBEs generally employ more gender-balanced  
15 workforce. We are more likely to offer flex time,  
16 tuition reimbursement, and profit sharing. There are  
17 an estimated 1.2 million firms owned by women of  
18 color, equaling one in every five or twenty percent of  
19 all women-owned firms.

20 In the state of Missouri women-owned firms  
21 employ 217,000 people with annual sales approaching 25  
22 billion. Yet women business owners receive less than  
23 two percent of all government contracting and Fortune  
24 company dollars. These statistics are from the Center  
25 for Women's Business Research.

1           Specifically, Colt Safety is in the  
2     wholesale trade industry and our size standard is 100  
3     employees. Currently Colt has thirteen full-time and  
4     two part-time employees. WIPP understands SBA's  
5     desire to improve the small business size regulation  
6     and share SBA's desired goals with simplification and  
7     clarity with regard to what constitutes a small  
8     business. After all, no small business wants to find  
9     out that they have been competing against large  
10    businesses.

11           Although simplification of a federal  
12    regulation is almost always beneficial to small  
13    businesses, WIPP members have found the current size  
14    standard rules to be workable, understandable, and  
15    fair. WIPP polled its membership and worked with its  
16    procurement committee to respond to the proposed size  
17    standard. Here's what we found. First -- I'm going  
18    to speed up because I have a lot to say.

19           First, we understand the SBA is considering  
20    reducing its size to ten levels. WIPP does not agree  
21    that the number of size standard levels should be  
22    reduced simply for the sake of reduction. Rather, SBA  
23    should establish as many size standard levels as is  
24    necessary to reflect the specific characteristics of  
25    sectors and subsectors of our economy. Moreover, WIPP

1 members have found that SBA's use of the North  
2 American Industry Classification System and its  
3 detailed categorization of industry subsectors to be  
4 helpful in determining the applicable size standard  
5 for their businesses.

6 Second, WIPP favors retaining size standard  
7 based on annual receipts for service sector, and  
8 requests that SBA change the definition of receipts  
9 from total or gross income to net income. A number of  
10 our WIPP members own companies that provide services  
11 or staffing needs as customers -- at a customer's  
12 location.

13 In service industries a company's internal  
14 staff may be small, but its payroll fluctuates and at  
15 times may be relatively large. This is also true for  
16 companies who hire temporary staff for specific  
17 customer assignments. Annual receipts provide a more  
18 reasonable and accurate measure of the size of such  
19 businesses.

20 WIPP expresses no opinion as to whether all  
21 small business should be subject to any annual  
22 receipts or other revenue-based standards. To the  
23 extent SBA continues to include employee-based  
24 standards, however, it should measure the number of  
25 employees on a full-time equivalent, FTE, basis rather

1 than continuing the current standard, which counts  
2 each individual employed on a full-time, part-time,  
3 temporary, or other basis.

4 On the other key issues for many women  
5 entrepreneur -- women entrepreneurs, key is -- key --  
6 flexibility is the key in employment. WIPP believes  
7 that a rule which counts every employee as full-time  
8 even though he or she may be working part-time or in a  
9 job sharing arrangement has a negative impact on many  
10 employees of small business, especially women and  
11 single parents.

12 We do not believe independent contractors  
13 should be treated as employees. Our members have  
14 expressed a legitimate concern that any major change  
15 in the small business size regulation could result in  
16 tens of thousands of businesses losing their small  
17 business eligibility for federal government. As SBA  
18 is aware, many small businesses develop business plans  
19 around these key business decisions obtaining and  
20 maintaining their eligibility for SBA small business  
21 programs.

22 MR. WHITAKER: That's five minutes, Ms.  
23 Bierman.

24 MS. BIERMAN: That's it.

25 MR. WHITAKER: May I have a copy of your

1 testimony?

2 MS. BIERMAN: Yes.

3 MR. WHITAKER: If you have any supplemental  
4 material too.

5 MS. BIERMAN: Thank you so much.

6 MR. WHITAKER: Thank you very much. Excuse  
7 me, is there -- I'm sorry.

8 MR. JACKSON: Had a question. Christine,  
9 in your testimony you recommended using net income as  
10 opposed to gross receipts.

11 MS. BIERMAN: Correct.

12 MR. JACKSON: Could you elaborate on --  
13 there's different ways that you can interpret net  
14 income. You can even look at profit or just excluding  
15 certain types of pass-through costs. How would you  
16 envision SBA to define net income for purposes of size  
17 standards?

18 MS. BIERMAN: I believe that WIPP has all  
19 of those, and I will defer that answer to them, and we  
20 would get you an answer on that. I think that we have  
21 -- actually have that all spelled out.

22 MR. JACKSON: Okay. Thank you.

23 MS. BIERMAN: Thank you.

24 MR. WHITAKER: Thank you.

25 MS. BIERMAN: Anything else?



1 MR. WHITAKER: Nicole Adewale.

2 MS. PRIVATERO BIONDO: We would like to  
3 represent ourself as a group. Is that possible?

4 MR. DIAZ: We're on the list --

5 MS. PRIVATERO BIONDO: We're all on the  
6 list.

7 MR. DIAZ: All of us are on there  
8 testifying.

9 AUDIENCE MEMBER: That's not the name you  
10 called.

11 MS. PRIVATERO BIONDO: Who did you call?

12 MR. WHITAKER: I called Nicole Adewale. Is  
13 a Abe Adewale here? Okay.

14 AUDIENCE MEMBER: I don't see him either.

15 MR. WHITAKER: Kelly Gillespie? Odysseus  
16 Lanier?

17 MR. LANIER: My name is Odysseus Lanier.

18 MR. WHITAKER: Sorry.

19 MR. LANIER: My name is Odysseus Lanier.  
20 I'm a partner with McConnell Jones Lanier & Murphy.  
21 That is a public accounting and consulting firm out of  
22 Houston Texas. I want to thank you for the  
23 opportunity to come up. I came up from Texas because  
24 I couldn't make a session in Dallas on the 22nd. So I  
25 decided to come up here and take care of this first

1 one.

2 One of the things I want to approach this  
3 from is from the accounting and consulting firm point  
4 of view. My testimony will take that shape as we go  
5 down the testimony. When establishing revised small  
6 business standards, I think that the SBA must remember  
7 that the mantra of small professional services  
8 businesses that provide labor intensive services,  
9 please remember this mantra, which is that small  
10 business must be larger than it has been in the past  
11 to allow us to be able to compete in the federal  
12 market.

13 Simplifying the existing size standard  
14 rules, which we think are basically workable and  
15 understandable, for the sake of simplification is not  
16 necessarily the appropriate approach to take. We'd  
17 rather see the SBA concentrate on achieving the goals  
18 of fairness and equity in small business contracting,  
19 and revise certain elements of the existing size  
20 standards to make them more compatible with a desire  
21 to promote the competitive viability of these  
22 businesses.

23 For example, accounting and consulting  
24 firms have existing size standards of seven million  
25 and six million in average annual sales over a

1 three-year period. That's in NAICS codes 541211 and  
2 541611. While some of our larger competitors in the  
3 Big Four, who we compete directly with, and some of  
4 the first-tier firms, lower-tier firms -- I believe  
5 that's first tier -- and boutique consulting firms  
6 such as Booz-Allen have annual sales exceeding one  
7 billion dollars, a tremendous amount of capacity.

8 The SBA should consider an employee-based  
9 standard, based on full-time equivalent employees for  
10 professional services businesses that rely on  
11 labor-intensive contracts to deliver quality services  
12 to the federal government. The SBA should use an FTE  
13 calculation, full-time equivalent calculation, because  
14 it more appropriately reflects the ability of  
15 professional services firms to build the depth and  
16 breadth necessary to compete with larger firms in the  
17 federal contracting market.

18 It has been our experience that firms that  
19 use a disproportionate number of independent  
20 contractors, temporary employees, and part-time  
21 employees would likely outgrow an employee-based size  
22 standard faster than a firm with full-time employees,  
23 but would not necessarily have the infrastructure  
24 necessary to grow, mature, and acquire the depth and  
25 breadth to one day become competitively viable large

1 businesses, which is the ultimate goal of the SBA  
2 program.

3 This is basically because small businesses  
4 who make a commitment to hire full-time employees and  
5 invest in them typically are more viable because they  
6 have the management, training, the quality control  
7 infrastructure to allow them to compete with larger  
8 businesses in the federal market.

9 This employee-based size standard should  
10 realistically be looked at and integrated with a  
11 receipt-based standard by industry classification to  
12 allow for unique characteristics of specific  
13 industries. For example, the accounting and  
14 consulting firm typically have receipts equal to  
15 somewhere in the neighborhood of 115 to \$125,000 per  
16 employee, which at a 200 employee size standard would  
17 yield approximately 23 to 25 million dollars in annual  
18 receipts.

19 You come back the other way because the  
20 existing standard now is seven million, which equates  
21 to about 61 FTE for accounting firms. Now, the goal  
22 to integrating this standard, this will allow these  
23 firms to build the infrastructure to compete with  
24 accounting and consulting firms below the top 25 firms  
25 in the United States, thereby fully integrated firms

1 owned by socially and economic disadvantaged  
2 individuals into the mainstream of American business,  
3 which has long been one of the goals of SBA as well.

4 The achievement of that goal to integrate  
5 these businesses into the mainstream is made even  
6 harder by the way that the government now procures  
7 goods and services, which has changed dramatically  
8 over the last few years. For example, trends -- we do  
9 contracting in the defense industry. Trends in the  
10 defense industry clearly suggest that the major  
11 defense prime contractors are consolidating and  
12 creating a broad consortium of specialized industries  
13 to meet the needs of their customer. That customer is  
14 DOD.

15 Consequently, there are only -- to give you  
16 an example in manufacturing, there are only two major  
17 aircraft manufacturing systems integrators in the  
18 United States that serve DOD. Consequently, the  
19 members of the small disadvantaged business community  
20 are more and more convinced that government agencies  
21 desire larger, more sophisticated contractors to  
22 support them. These changes in the federal  
23 contracting market make it abundantly clear that,  
24 again, small businesses must be larger than -- small  
25 business must be larger than it has been in the past

1 to allow us to compete.

2 MR. WHITAKER: That's five minutes.

3 MR. LANIER: Okay.

4 MR. WHITAKER: Thank you very much.

5 MR. LANIER: Can I make one more statement?

6 MR. WHITAKER: Sure.

7 MR. LANIER: Yeah. You know, one of the  
8 things I want to talk about is we're caught in the  
9 land of the "tweeners." There are a lot of us here  
10 who are other than small, but not relatively large,  
11 and we have a high rate of attrition for the  
12 government contracting program because they bump up  
13 against those larger firms at some point.

14 MR. WHITAKER: Thank you. May I have a  
15 copy of your testimony? Are there any questions from  
16 the panel. One question for you.

17 MR. JACKSON: Mr. Lanier, since you came so  
18 far, I want to ask you a question.

19 MR. LANIER: I understand.

20 MR. JACKSON: We certainly have received  
21 many comments from the accounting, CPA profession.

22 MR. LANIER: Right.

23 MR. JACKSON: We're getting a lot of  
24 information on that industry. But when you talk about  
25 competitive viability of a company, you know, how do

1 you know that you've achieved that? What factors that  
2 you would look at being able to compete would few  
3 major companies in the industry -- I would expect many  
4 companies, even their competitors, would say we're not  
5 competitive. How would you draw the line or what  
6 would you focus on is the most important aspect of  
7 being able to say a company is competitive and viable?

8 MR. LANIER: Leverage. Leverage that  
9 basically consists of people, process, and technology.  
10 Once you get to the point where you have the  
11 appropriate economies of scale with the people, the  
12 ability to have a path to amass capital, to be able to  
13 put in the technological infrastructure necessary to  
14 compete on a global basis, and you have a process in  
15 place to be able to manage large scale projects.  
16 That's the benchmark that we use to gauge competitive  
17 viability.

18 You know, even right now we compete with  
19 some of the larger firms now. We have one because we  
20 aren't your typical AA firm. We had 42 people before  
21 we got to the program. So those three benchmarks are  
22 what we look at to be able to discern whether or not  
23 we're competitively viable. You have people that  
24 complain or make excuses as to why, but those three  
25 issues are the ones that allow you to compete, and

1 increasing the size standard will allow you to be able  
2 to do that because you can build the leverage and the  
3 scale you need to compete.

4 MR. JACKSON: Thank you.

5 MR. WHITAKER: Thank you very much. Rosana  
6 Biondo? Can we have three people speaking, is that  
7 it?

8 MR. DIAZ: We're all three on the list to  
9 speak, so for time we're just going to let her speak.

10 MR. WHITAKER: So you're just going to have  
11 one speaking then?

12 MS. DIAZ: We're just going to introduce  
13 ourselves to you.

14 MR. WHITAKER: That will be fine.

15 MS. PRIVATERO BIONDO: I'm Rosana Privatero  
16 Biondo, and I'm with Mark One Electric. I'm from  
17 Kansas City, Missouri, and we also represent Women in  
18 Construction in Kansas City.

19 MR. DIAZ: I'm Armando Diaz. I'm the  
20 president, chairman of Diaz Construction Company.  
21 Also the president of the Hispanic Contractors of  
22 Kansas City.

23 MR. MABIN: I'm Joseph Mabin, executive  
24 director of the Minority Contractors Association of  
25 Greater Kansas City.



1 MS. DIAZ: Jennifer Diaz, executive  
2 director of Kansas City Hispanic Association  
3 Contractors Enterprise.

4 MS. PRIVATERO BIONDO: We'd like to thank  
5 you for having this hearing today and we're happy to  
6 provide testimony. And this is the testimony of,  
7 again, the following organizations. the Hispanic  
8 Organization for Justice and Equality, called HOJE;  
9 the Kansas City Hispanic Association Contractors,  
10 KCHACE; Minority Contractors Association; Women in  
11 Construction of Kansas City; Diaz Construction  
12 Company; Mark One Electric; and Rodriguez Mechanical  
13 Contractors.

14 We support the SBA's effort to reduce the  
15 number of size standards. We agree with the Hispanic  
16 Chamber of Commerce that 37 is too many, but ten is  
17 too few. In an effort to assist the SBA, we would  
18 like to propose a couple of changes as related to the  
19 construction industry. Today we are going to focus on  
20 our discipline, which is construction.

21 Inadequate size standards. Certain size  
22 standards that the SBA uses to determine when a small  
23 business becomes a large business are completely  
24 inadequate. The reason SBA's size standards for such  
25 industries are inadequate is they do not have even the

1 remote representative size that the average small  
2 business should be in a particular industry.

3 We would propose that all construction  
4 contractors should be at one size standard. The  
5 reasoning for this -- the reason for this being that  
6 most specialty contractors grow and become prime  
7 contractors or general contractors, perform multiple  
8 scopes as a specialty contractor, and most general  
9 contractors perform specialty construction and work as  
10 well. To explain this, let me give you the definition  
11 for a general contractor, a prime contractor, and a  
12 specialty contractor.

13 A general contractor, an entity that  
14 contracts directly with an owner and provides multiple  
15 scopes for the owner by subcontracting with specialty  
16 contractors, and may or may not perform some specialty  
17 scopes with their own labor force. A general  
18 contractor also provides bonding directly to the owner  
19 and various other insurance that affect the project.

20 A prime contractor, an entity that may be a  
21 specialty contractor but contracts directly with an  
22 owner and provides multiple scopes of work for the  
23 owner by subcontracting with other specialty  
24 contractors and performing some specialty scopes with  
25 their own labor force. A prime contractor also

1 provides bonding directly to the owner and various  
2 other insurances that affect the project.

3 A specialty contractor, an entity that  
4 contracts with a general contractor for a specific  
5 scope. A specialty contractor also provides --  
6 performs as a prime contractor and works direct for an  
7 owner. So therefore, that makes them a general  
8 contractor and a specialty contractor at the same  
9 time. So that is the reason we see that there should  
10 be one category for construction versus multiple  
11 categories.

12 By having one size standard for the  
13 construction industry, the SBA would provide an  
14 opportunity for specialty contractors to grow into  
15 substantial general contractors. We agree with the  
16 Minority Supplier Counsel that the SBA should take the  
17 top five general contractors' gross receipts as listed  
18 by the Engineering Record News, average them, and make  
19 the size standard ten percent of that average. We  
20 list the average gross receipts for general  
21 contractors as well as the top specialty contractors.

22 Below on your sheets that we have provided  
23 for you we show that average. The average for the top  
24 five general contractors is \$49,474,700,000.00. The  
25 average of that is 9,894,940,000, which is the total

1 ten percent average of almost one billion dollars.

2 The specialty contractors, again, the total  
3 for them was 10,146,900,000, with an average of the  
4 five of 2,029,380,000, which an average would be  
5 202,938,000.

6 In addition, there would be a yearly  
7 inflationary adjustment because union contractors'  
8 labor increase yearly, as do material prices and  
9 insurance costs. The specialty contractors standard  
10 is \$12,000,000.00, which given with these facts is  
11 grossly too low for the local and national community.

12 The costs of construction labor increased  
13 dramatically over the past five years and greatly in  
14 the past two years. The costs of materials including  
15 concrete, copper wire, lumber, and steel just to name  
16 a few have increased more than fifty percent, yet the  
17 size standards have not increased with these changes  
18 in the economy.

19 We do not agree with the Minority Supplier  
20 Council that there should be different standards for  
21 the very small opportunities in construction and in  
22 other industries. The very small and the medium-sized  
23 businesses are -- all compete for contracts against  
24 the top listed five companies. Electrical contractors  
25 and mechanical contractors. For example, an

1 electrical contractor with an annual revenue under  
2 \$12,000,000.00 competes with a company who's number  
3 two, Quanta -- excuse me, number three. The third  
4 largest contractor in Kansas City, Missouri with the  
5 Kansas City Power & Light, a private sector company,  
6 for jobs of fifty to a hundred thousand dollars, and  
7 yet they do a billion. So we are competing small  
8 companies with the billion dollar companies every day.

9 In conclusion, ten percent of the average  
10 of the top general contractors is almost one billion,  
11 and ten percent of the specialty contractors is 202  
12 million. We are suggesting one size standard for all  
13 construction at \$150,000,000.00. And this should also  
14 have cost of living increase and be done on a yearly  
15 basis.

16 Our next point is personal net worth. The  
17 personal net worth will need to be increased when the  
18 size standard based on gross receipts is increased.  
19 The current limitation on net worth is \$750,000.00.  
20 An owner's personal net worth should coincide with the  
21 amount of net worth needed for bonding lines --  
22 bonding, lines of credit, and to perform contracts at  
23 the gross receipts of 150 million dollars. Personal  
24 net worth should be raised to five percent of the size  
25 standard, which would be \$7,500,000.00 and should also

1 have a yearly increase.

2           Number of employees. For the construction  
3 industry, we are not in favor of the calculation of  
4 number of employees as a size standard. In the  
5 construction industry the calculation of the number of  
6 employees would not be a consistent measure for the  
7 size of a company.

8           Joint ventures. Small businesses that  
9 partner in a joint venture should not be penalized for  
10 doing so. Only the self-performed revenue should  
11 count toward the size standard, not the total joint  
12 venture.

13           And in conclusion, again, we are asking  
14 that the size standard be raised to 150 million  
15 dollars in the construction industry and that there be  
16 one size standard in construction.

17           MR. WHITAKER: Thank you. Does the panel  
18 have any questions?

19           MR. JACKSON: One question that I have. In  
20 a lot of comments that we receive, and I can't speak  
21 to the construction industry per se, but in general,  
22 small -- some of the smaller businesses in various  
23 industries feel that SBA size standards may be too  
24 high in some instances or if SBA increases the  
25 standard then they would not be competitively viable.

1 In your testimony you recommend a fairly substantial  
2 increase in the current standard. As part of a  
3 regulatory flexibility analysis that SBA would have to  
4 conduct if it proposed that level, it would have to  
5 discuss the impact on all the smaller businesses in  
6 the industry. How do you see this affecting the  
7 competitiveness of businesses half of your size?

8 MS. PRIVATERO BIONDO: We have discussed  
9 this among the group because, you know, we wanted to  
10 be fair within the industry, but again, we show the  
11 example that a company that does -- in the small  
12 business size standard at the current rate of  
13 \$12,000,000.00 that you are competing still with the  
14 billion dollar companies for a \$50,000 job. And so in  
15 reality you're forcing us to compete with the big  
16 boys, but yet you're not giving us the ability to stay  
17 small enough -- \$12,000,000.00 just is too small for  
18 the industry. Is it okay --

19 MR. MABIN: The reality of it is if you  
20 want any graduation --

21 MR. WHITAKER: Can we get your name,  
22 please?

23 MR. MABIN: Joseph Mabin, Minority  
24 Contractors Association of Greater Kansas City. We  
25 all believe in graduation, but at some point it has to

1 be tied to private sector capture. If you get to the  
2 top rung at twelve million now and you're not doing  
3 any private sector work at all, it's ability. The  
4 smaller companies don't have the overhead. So that's  
5 a built-in advantage on the smaller jobs, but it is  
6 true that even our small three, four million dollar  
7 companies are competing against the giants. So the  
8 size standard as it's presently promulgated is simply  
9 not big enough to allow anyone to grow, and I would  
10 think the impact on the smaller contractors is  
11 negligible.

12 MR. JACKSON: Thank you.

13 MR. WHITAKER: I believe we have your  
14 testimony. Thank you very much. Paul Rodriguez?

15 MR. RODRIGUEZ: Thank you. My name is Paul  
16 Rodriguez. I am going to be real short, but it's  
17 going to take me a long time to tell you who I'm here  
18 representing. I'm a board member of the United States  
19 Hispanic Chamber of Commerce. I'm a regional chair  
20 for region three, which includes six states.

21 I'm also representing LAMA, Latin American  
22 Management Association. I'm the past -- immediate  
23 past chair of the Kansas City Hispanic Chamber and  
24 presenting their testimony in written form, and also  
25 among the board of the Minority Supplier Council in



1 Kansas City, and I've been asked to submit their  
2 comments.

3 But I do -- the reason why I say I'm going  
4 to be short is we all sat up till one o'clock in the  
5 morning last night with the Kansas City contingency in  
6 developing by consensus as to really get into depth of  
7 what the real issue is, and particular in  
8 construction. So if I could, I'm just going to hand  
9 this up now with my business card.

10 I'm just going to read a little from Steve  
11 Denlinger and his comment. First off, I wanted to  
12 thank you for the opportunity to testify at this  
13 hearing regarding the SBA's desire to perform the size  
14 standards by which small businesses are formally  
15 defined by the federal government. SBA desires to  
16 revamp the size standards system based upon which it  
17 determines which businesses are small for the purposes  
18 of participation in many small business programs.  
19 SBA -- SBA's present size standards system is based on  
20 revenues for some industries and number of employees  
21 for other industries. SBA wants to change over to  
22 size standards based solely on the numbers of  
23 employees.

24 He spoke to ill intent. While we disagree  
25 with the SBA's proposed size standards reforms last

1 year, we are not suggesting bad faith on the part of  
2 the SBA. Reforming the size standard system is a huge  
3 undertaking. No SBA official or group of officials  
4 could possibly foresee all the permutations of their  
5 proposals. To its credit, SBA retracted its proposals  
6 in a calm and responsible manner.

7 All the other things that is in his  
8 testimony is really in concurrence with what you just  
9 heard, but I did want to touch into a multitiered  
10 system because I believe that was one of the questions  
11 that was brought up. And under its proposed reforms  
12 SBA would have classified IT businesses, including  
13 software developers and system integrators, for  
14 example, as large businesses upon reaching 150  
15 employees and 21 million per year in revenues,  
16 three-year average.

17 This is ludicrous on its face and why,  
18 because IT is an industry wherein medium-sized  
19 businesses have thousands of employees and hundreds of  
20 millions of dollars per year in revenues. Large  
21 businesses have in excess of a hundred thousand  
22 employees and billion dollars per year in revenues.  
23 There are certain industries wherein the disparity  
24 between what SBA says is a large business and what is  
25 truly a large business is simply not based in reality.

1           One such sector is information technology.  
2   This field is astonishingly diverse and has thousands  
3   upon thousands of firms with sales ranging from a  
4   hundred thousand per year to over six billion per  
5   year. It is indeed a challenge for SBA to adopt a  
6   single sized standard for such a diverse field.

7           And what we have offered is a three-tiered,  
8   multitiered system which I have here in this white  
9   paper, and as well there is another proposed tiered  
10   system by the Minority Supplier Council, and this  
11   suggests that possibly a tier one small business  
12   annual sales up to five million, a tier two up to 25  
13   million, and a tier three up to a hundred million.

14          In reality, for a start-up or a new company  
15   entering into the federal marketplace, the tier one is  
16   where you would -- could basically assure success  
17   because that is probably where the need for financial  
18   literacy, for management skills, and all the programs  
19   that the SBA offer could be offered in the tier one  
20   with elevated courses in a tier two and then oversight  
21   in a tier three. I want to thank you for the time  
22   you've allotted me.

23           MR. WHITAKER: Thank you. You were right  
24   on the money.

25           MR. RODRIGUEZ: Thank you.

1 MR. WHITAKER: Any questions? No. Thank  
2 you very much.

3 MR. RODRIGUEZ: Thank you so much.

4 MR. WHITAKER: Wayne Harvey?

5 MR. HARVEY: Good morning. My name is  
6 Wayne Harvey. I'm the regional director of the  
7 Missouri FAST SBIR/STTR Assistance Center for the  
8 eastern section of Missouri. MOFAST is part of the  
9 University of Missouri Extension Program and operates  
10 under the same umbrella as the small business  
11 development centers. We basically educate companies  
12 about the SBIR/STTR program and assist them in their  
13 application process.

14 I've been in this position for three years.  
15 Prior to that I was the founder and CEO of a marine  
16 biotechnology company located in northern California  
17 in the early 1980s, where we received both SBIR  
18 funding from the National Science Foundation as well  
19 as venture capital. More recently, I was president  
20 and COO of a biopharmaceutical firm in Wisconsin where  
21 we also received SBIR funding from NIH as well as  
22 venture capital from a major European pharmaceutical  
23 firm. As a result, I'm very familiar with the  
24 challenges and the difficulties in obtaining funding  
25 from both sources as well as the entrepreneurial

1 process in small high tech companies.

2 I currently work with about 150 clients, of  
3 which only about a third I feel are potentially  
4 qualified from a technical viewpoint to receive SBIR  
5 funding. Of my active clients, only two have  
6 indicated that they are at risk of being eliminated  
7 from the SBIR program eligibility due to venture  
8 capital ownership. In both cases, VC investments are  
9 currently under fifty percent, but on their next round  
10 of financing they will be over the fifty percent  
11 limit.

12 As a result, my comments are based on  
13 several observations which I have made over the past  
14 25 years in the entrepreneurial community. It  
15 requires a considerable amount of capital to launch a  
16 new technically-based entrepreneurial company,  
17 especially those involved in plant and life science  
18 technologies. Typically, neither SBIR funding nor  
19 venture capital is sufficient to accomplish the task  
20 independently. As a result, it requires capital from  
21 a number of different sources to achieve success.  
22 These sources may include friends, families and fools,  
23 angel investors, institutional VCs, corporations, as  
24 well as federal grants.

25 Specifically, the SBIR program is designed

1 to provide capital for Phase I and II -- and II  
2 research and development while the company is  
3 challenged to raise Phase III funds outside. Neither  
4 Phase I nor Phase II SBIR funding cover more than the  
5 direct costs. As a result, companies need other  
6 capital sources to fully utilize the grant funding.  
7 And as I've mentioned before, raising capital is not  
8 an easy task.

9 For example, to give you some statistics on  
10 angel market, in 2004 angels invested about the same  
11 amount as the institutional VCs, 22 and a half billion  
12 dollars. That's up 24 percent from 2003. Only ten  
13 percent of those funds went into, for example,  
14 biotech, and the acceptance rate is only about ten  
15 percent. So only about one out of every ten companies  
16 that approaches angel investors gets funded. The  
17 other interesting statistic is 52 percent of angel  
18 investments goes into what we would call seed or  
19 start-up stage companies.

20 Venture capital investments in seed and  
21 start-up stage companies has been declining since  
22 1995, and in 2004 represented only 1.7 percent of  
23 their total VC investments. This is down from two  
24 percent in 2003. Early stage companies represent  
25 approximately 18.6 percent, which is up slightly from

1 2003 level of 17.8. By far the vast majority of  
2 funds, nearly eighty percent of all their investments  
3 goes -- go into expansion, later stage companies.

4 Second, the very nature of the venture  
5 capital industry would appear to exclude them from the  
6 normal criteria used to exclude large corporations  
7 and/or universities from eligibility. First, small VC  
8 firms are investors in multiple, sometimes twelve to  
9 fifteen different portfolio companies which are  
10 typically unrelated to each other.

11 Second, VC funds exist for a limited period  
12 of time, normally ten years. Which means they must  
13 invest and divest within a very short period,  
14 typically four to six years. Third, their investors,  
15 which include financial institutions, state pension  
16 funds, corporations, fund of funds, and others, and  
17 the managers are separated in terms of their liability  
18 and control of the fund. While their primary function  
19 is to provide return on invested capital to their  
20 investors, they serve as a significant business  
21 resource to their portfolio companies in the process  
22 of achieving the company's objectives along with their  
23 own.

24 Third, even if a company is successful in  
25 raising venture capital without exceeding the fifty

1 percent equity ownership, they will exceed it on their  
2 next or succeeding rounds. Companies that require  
3 significant capital resources to attain  
4 commercialization will give up more than fifty percent  
5 of their equity. Bob Swanson certainly did at  
6 Genentech and Bill Gates certainly has at Microsoft.

7 MR. WHITAKER: That's five minutes.

8 MR. HARVEY: It's a simple fact -- is that  
9 five? Thank you. Let me just quickly say I think  
10 that there's several potential solutions. Allow VC  
11 firms to exceed fifty percent only if it represents a  
12 syndicate of more than one firm. In other words, no  
13 single VC firm owns or controls more than 49 percent  
14 of the company. Allow VC investments from firms in  
15 which no single investor in the fund contributes more  
16 than fifty percent to the VC's capitalization.

17 Allow only funds of less than a certain  
18 size, say 200 million, since these are the funds most  
19 likely investing in seed and early stage companies  
20 which are going to be most likely the candidates for  
21 SBIR grants. And finally, you could establish or  
22 require an equity buyback provision which allows the  
23 companies to buy back equity for successful grant  
24 applications. I've outlined an example of that in my  
25 testimony.



1           MR. WHITAKER: Thank you. May I have a  
2 copy of your testimony? I believe there are no  
3 questions. Thank you very much.

4           MR. HARVEY: Okay.

5           MR. WHITAKER: Kelly Gillespie.

6           MR. GILLESPIE: Good morning. My name is  
7 Kelly Gillespie. I serve as executive director of  
8 Missouri Biotechnology Association. MOBIO is a  
9 statewide trade association dedicated to development  
10 and growth of the Missouri biotechnology and life  
11 sciences industry. I apologize for not being here at  
12 the onset of the meeting. I did just walk in. I had  
13 previously scheduled that I would be here at 9:30. I  
14 came across the state last night and this is my second  
15 day on the job. So I do ask some forgiveness in my  
16 first public hearing in front of SBA.

17           On behalf of MOBIO, I would like to thank  
18 the SBA and Regional Administrator Sam Jones for  
19 conducting these public hearings regarding small  
20 business issues that relate to SBA size standards. I  
21 have testimony today that I'm willing to provide to  
22 you -- I will not read that -- and I have also  
23 forwarded electronically to Mr. Jackson this morning.

24           I also do not want to replicate what was  
25 stated by the previous gentleman because many of

1 our -- many of my points are duplicative. But  
2 obviously I'm here today as a representative of MOBIO  
3 encouraged by our national BIO organization to bring  
4 light to this issue that the -- through the series of  
5 rulings that the term "individuals" means human beings  
6 and that this interpretation excludes corporations and  
7 all other forms of artificial entities, including  
8 VCC's. There is no statutory requirement that compels  
9 this interpretation, and we do ask that this  
10 definition be reviewed in the future.

11 We do feel this unnecessary exclusion of  
12 these small businesses is not consistent with the  
13 purpose of the SBIR program, which is to stimulate  
14 small businesses that would commercialize important  
15 technological developments. We do have  
16 recommendations that I am prepared to submit to you,  
17 and I'd just like to conclude by saying that what  
18 Missouri Biotechnology stakeholders need most is  
19 continued support from their communities, and  
20 including consistent access to the venture capital and  
21 financial markets. And appreciate the opportunity to  
22 come before you today and offer this testimony.

23 MR. WHITAKER: Thank you very much. Any  
24 questions? David Austin? Michael Zambrana?

25 MR. ZAMBRANA: Good morning. Thank you for

1 having this panel here today. My name is Michael  
2 Zambrana. I'm president of Pangea Group. Pangea is  
3 currently a small environmental and construction  
4 contractor based in St. Louis, Missouri. I also serve  
5 as leader of a group of small businesses as a chair on  
6 the American Military Engineers Small Business Council  
7 and past president of the Hispanic Chamber of Commerce  
8 of Metropolitan St. Louis. I'm currently on the  
9 advisory board.

10 I'd like to frame my remarks with some  
11 facts concerning my company. Pangea had five  
12 employees in 1998. Pangea currently employees about  
13 180 people across the country, ninety of which are  
14 full-time, and ninety of which are craft labor.  
15 Pangea regularly bids and executes projects regulated  
16 by the North American Industry Classification Codes in  
17 federal procurements. Pangea has union agreements  
18 with various unions across the country. Pangea works  
19 under numerous NAICS codes for environmental,  
20 services, and construction.

21 Pangea is creating jobs, paying taxes, and  
22 supporting the military's mission along with numerous  
23 other government agencies throughout the country. I'm  
24 here to say that the size standards must increase and  
25 soon if Pangea is to continue our success. I want to

1 emphasize the word "soon." If SBA is having problems  
2 with specific industries, then please segregate  
3 problem areas and proceed with the changes to the  
4 codes that are not in dispute.

5           These NAICS code revisions primarily impact  
6 government agencies and government contractors. Few  
7 large private entities utilize these codes except on  
8 government prime contracts. Small businesses and  
9 government agencies need the SBA to act quickly to  
10 address the needs in the marketplace.

11           I would support a change to people  
12 standards with some clarification and drastic  
13 increases. Changing to people standards, or employee  
14 counts, can have a significant negative impact on my  
15 business and others like mine if the definition of  
16 employee is not clarified. The current definition  
17 discriminates against union firms, firms that offer  
18 more than one specialty, and firms that support our  
19 nation's mission over a large geographic area with  
20 small, one-time projects. These projects require  
21 short-term employment of multiple individuals.

22           I would like to suggest full-time  
23 equivalents in which any combination of employees  
24 whose hours worked add up to 2080 hours in a year,  
25 excluding overtime, would be considered one full-time

1 equivalent. Some definitions have suggested that any  
2 employee, even if they only work one day, would be  
3 counted as an employee according to the new standards.  
4 This is especially damaging to firms working under  
5 union agreements and firms working on small projects  
6 across the country for the federal government where we  
7 must staff up and down at different locations.

8           Small construction firms regularly call  
9 union halls for short-term assignments. This is one  
10 of their user-friendly benefits of the construction  
11 trades. The bad news is that sometimes we have to  
12 change employees, whether union or not, once they have  
13 been on the job. This should count as one full-time  
14 employee if we change to people standards.  
15 Manufacturing companies do not have this  
16 characteristic of most employee -- employee terms.  
17 Should diverse small businesses supporting our nation  
18 be held to the same standard?

19           Union firms cannot always get the same  
20 employee from the union hall. In most cases, whoever  
21 has the most seniority on the bench is sent to my  
22 projects. I cannot determine the craft person I will  
23 get on my job when I call the union hall. I have an  
24 example just yesterday where I hired two cement masons  
25 for one day. I hired one day and laid them off the

1 next day because that's all that we needed.

2 To drive this point home, many federal  
3 funded projects such as the Department of Energy's  
4 Paducah site have site-specific union agreements in  
5 place which have been negotiated directly with the  
6 Department of Energy's involvement. These agreements  
7 must be accepted by firms wanting to work at the  
8 project. We do not have a choice and we must accept  
9 employees provided by the union.

10 The current interpretation published by the  
11 Federal Register on December 3rd would effectively  
12 reduce the number of small businesses already  
13 providing services to the federal government, and in  
14 effect it would reduce competition overall, reduce the  
15 number of small -- small disadvantaged, HUBZone, and  
16 service disabled firms. It would also reduce the  
17 number of emerging small businesses who must be less  
18 than half their size standard.

19 The U.S. Department of Energy already  
20 cannot make its small business goals. The DOE and SBA  
21 have been instructed through language in the new Iraqi  
22 supplemental bill to try to find a solution to the  
23 DOE's problems. Reducing the number of small  
24 businesses is not the answer with an unnecessarily  
25 restrictive current definition of an employee.

1 Increased competition between small business is good  
2 for government and good for the taxpayers.  
3 Immediately increasing the size standards for  
4 construction and other services will ensure more small  
5 businesses compete to these agencies.

6 Annual recertifications to prove small  
7 business status to size standards are another  
8 burdensome proposal which I would like to state my  
9 opposition to at this time. Firms have to go through  
10 great lengths to certify themselves with the SBA  
11 currently. If a contract has been awarded to a firm  
12 while they qualify as a small business, then the  
13 duration of the contract should be considered small.  
14 Currently if a firm is small when a procurement is  
15 first advertised, then it can compete. This should  
16 not change.

17 MR. WHITAKER: That's five minutes.

18 MR. ZAMBRANA: Okay. Basically I would  
19 like to just close in saying that I request the  
20 definition of employee be reassessed to include  
21 full-time equivalent as previously described, the  
22 numbers be increased drastically for all size  
23 standards, and no annual recertification. Please  
24 implement these as soon as possible.

25 MR. WHITAKER: Thank you. We have a

1 question.

2 MR. JACKSON: You talked about the problems  
3 in construction of selecting labor and not necessarily  
4 the same person working from one job to another.

5 MR. ZAMBRANA: Correct.

6 MR. JACKSON: Does that suggest that number  
7 of employees is not as appropriate of a size measure  
8 for construction than average annual receipts?

9 MR. ZAMBRANA: That's correct if you're  
10 counting a part-time employee as a full-time employee  
11 as is currently described. I think if you had an  
12 accumulation of hours, then of course it would be a  
13 fair standard.

14 MR. JACKSON: So if SBA considered receipts  
15 or a full-time equivalent standard, you would be  
16 neutral in terms of which would be a better measure?

17 MR. ZAMBRANA: That's correct, as long as  
18 either one would be drastically increased.

19 MR. JACKSON: Thank you.

20 MR. WHITAKER: Thank you. May I have a  
21 copy of your testimony?

22 MR. ZAMBRANA: Can I make a copy and bring  
23 it back up?

24 MR. WHITAKER: Sure. Sure. William Simon.

25 MR. SIMON: Good morning. My name is Bill



1 Simon. I'm vice president and chief operating officer  
2 of the Center For Emerging Technologies, which is a  
3 high technology, biotechnology incubator where in the  
4 last seven years I retained companies that have raised  
5 over 500 million dollars of equity. We are -- have  
6 been a provider of SBIR support for over seven years.  
7 This includes numerous training events which Mr. Jones  
8 has graciously opened, and I was the 1999 Tibbetts  
9 Award winner for excellence in SBIR service. I'm also  
10 a new reviewer for the NSF Phase II SBIR's, so I'm  
11 familiar with the program.

12 The size standards relating to ownership  
13 and control of SBIR applicants should not be changed  
14 very much. The current rule is majority ownership and  
15 control by U.S. national persons. The issue of  
16 ownership and control of a small, growing business  
17 necessarily means that things will change.

18 An early stage company will usually be  
19 funded by its founders. Somewhere at the beginning  
20 they may seek SBIR funding. The familiar friends,  
21 family, and fools may also join in the ownership group  
22 somewhere. This small business should be eligible  
23 since they are small and have the U.S. ownership  
24 attribute.

25 Sometimes a university, which is a

1 nonqualifying entity, or a big company, which is a  
2 nonqualifying entity, may own a few percent of the  
3 shares from a licensing arrangement from the  
4 intellectual property that begins or moves along the  
5 research. This should be okay up to a point, say  
6 nineteen percent, which is exactly the same for  
7 ownership threshold that you have for assigning SBA  
8 loans. So you wouldn't have different standards for  
9 different things. Provided that this nonqualifying  
10 entity have no board seats and no control.

11 At some point in the life of a company they  
12 may agree to sell shares to a venture capital company.  
13 Certainly it is well known that the winning of SBIR  
14 awards validates the technology to outside people and  
15 makes it a more attractive investment. This decision  
16 to sell to VCs is a conscious choice. This decision  
17 may make them ineligible to receive this small 2.5  
18 percent of the extramural budgets set aside for small  
19 businesses, worth a total of about two billion dollars  
20 a year.

21 However, when they pass the fifty percent  
22 threshold they still should be just eligible to go  
23 after the seventy -- 97.5 percent of the budget that's  
24 available for all to meet. The sum of all -- it  
25 should be okay for the sum of all venture ownership to

1 be fifty percent or less, providing that the VCs  
2 qualify on their own. That is, VCs must be owned by  
3 qualified entities, not big companies or labor unions  
4 or pension funds. The fear is that there would be  
5 subsidiaries set up that would be called venture  
6 capital firms that would be themselves eligible.

7 The control exercised by these firms should  
8 be less than a majority of the board of directors. If  
9 they are a majority of the board of directors, then  
10 the control question is negative and they should not  
11 be eligible to accept SBIR funding. Further, if a  
12 group of individuals fewer than 500 owns shares in a  
13 company through some other legal entity, C Corps,  
14 LLCs, etc., then they should be counted as individuals  
15 for ownership and control issues, provided that they  
16 meet the other tests. Separation of ownership and  
17 control is important. Thank you.

18 MR. WHITAKER: Thank you very much.

19 MR. SIMON: Questions?

20 MR. WHITAKER: Questions?

21 MR. JONES: Mr. Simon, I heard some mention  
22 of the fact that people who are able to accumulate  
23 wealth and perhaps then either be angel investors or  
24 participants in venture capital companies are for  
25 various legal and tax reasons managing their wealth

1 not in their own name, but in the name of an LLC or a  
2 trust or subject of that nature. Does that have an  
3 impact on these standards and their ability to  
4 participate in the SBIR program?

5 MR. SIMON: It would be my opinion and  
6 recommendation that those legal entities be dissolved  
7 for the purpose of counting noses to see who is  
8 eligible and who is not. We had one of our firms  
9 declined to apply for a grant which they were  
10 encouraged to do by the agency, and they were owned by  
11 fifteen individuals who formed an LLC just to own the  
12 firm. And they were -- they were told they were on  
13 the fence about whether they would be eligible or not.

14 They didn't want to accept the grant and  
15 then have to give it back, so they decided to not do  
16 it. But I think that you should be able to dissolve  
17 these entities, you know, by studying and just say,  
18 okay, they're all there, trusts and whatever. But  
19 venture firms that are formed by qualified investors,  
20 accredited investors should be allowed to invest.  
21 That wouldn't be a change. But you wouldn't want a  
22 big company or a nonqualifying entity in there to make  
23 it be an ineligible entity.

24 MR. JONES: Thank you.

25 MR. WHITAKER: Thank you, Mr. Simon.

1 MR. SIMON: You're welcome. Thank you.

2 MR. WHITAKER: Thomas Melzer?

3 MR. NAISBITT: Tom Melzer is not going to  
4 be here this morning. I'm Scott Naisbitt from  
5 RiverVest, the same firm. I'm happy to speak now or  
6 later in the program or wait, whichever you prefer.

7 MR. WHITAKER: Will Mr. Melzer be coming?

8 MR. NAISBITT: He will not.

9 MR. WHITAKER: You're welcome to speak now  
10 if you'd like since you're already standing.

11 MR. NAISBITT: Good morning. My name is  
12 Scott Naisbitt. I'm a principal at RiverVest Venture  
13 Partners. We are a venture capital firm that invests  
14 in early stage biotechnology and medical device  
15 companies. I want to thank you for holding the  
16 hearings, and my comments are going to focus on an  
17 issue that directly affects the viability of those  
18 early stage companies, and importantly, their ability  
19 to attract necessary capital as they progress. And a  
20 big challenge for that right now is the inability of  
21 businesses that are majority owned by venture capital  
22 firms such as ourselves to participate in the SBIR  
23 program.

24 The SBIR program is a very important source  
25 of funding for these early stage companies at a stage

1 where the science is very risky and other forms of  
2 capital are difficult to obtain. Currently, a  
3 business concern has to be owned at least 51 percent  
4 by individuals that are citizens of the United States.  
5 And through a series of rulings the SBA's office has  
6 interpreted that to exclude venture capital firms.

7 As a result, many small businesses in  
8 biotechnology cannot participate in the program,  
9 including many of our portfolio companies and  
10 portfolio companies of other venture capital firms.  
11 The unnecessary exclusion of these small businesses  
12 isn't consistent with the purpose of the SBIR -- SBIR  
13 program, which is to stimulate small businesses that  
14 will commercialize important technological  
15 developments. And I'm just going to kind of address  
16 two points that illustrate that.

17 Under the current rulings, the SBIR program  
18 selects only businesses which have been unable to  
19 obtain significant venture backing. And businesses  
20 that have obtained venture backing are usually, you  
21 know, at the early stage very small, small number of  
22 employees, no revenue, trying to develop technology to  
23 the point where it might be commercializable, but by  
24 selecting those that can't obtain venture capital,  
25 private sources of financing, the SBIR runs the risk

1 of not funding promising technologies in the small  
2 businesses that have the best prospects for success.  
3 In general, venture backed companies have stronger  
4 management. They have better advice on the board with  
5 broader experience, and are more likely to accomplish  
6 the SBIR program's goals of successfully  
7 commercializing new discoveries and stimulating  
8 economic development.

9           The exclusion of venture-backed companies  
10 also leads to a decline in the quality and quantity of  
11 SBIR grant applications submitted to NIH and other  
12 agencies involved in important health-related  
13 research. So for example, Kereos is a small St. Louis  
14 biopharmaceutical company that is collaborating with  
15 the academic lab at Washington University School of  
16 Medicine to bring an exciting but early stage  
17 technology to patients with cancer and cardiovascular  
18 disease.

19           They have under twenty million dollars.  
20 They have no products on the market. But Kereos did  
21 not apply -- I'm sorry, they have under twenty  
22 employees. Kereos did not apply for SBIR funding  
23 because it intended to accept venture capital funds  
24 that would result in over 51 percent ownership by U.S.  
25 venture capital firms, and therefore, under current

1 rulings make them ineligible for SBIR funding. As a  
2 result, they are not able to pursue a number of  
3 exciting research opportunities for product extensions  
4 that would advance medicine and innovation but lie  
5 outside the venture capitalist focused initiatives.

6 On the other hand, small business that rely  
7 on SBIR funding for much of their operations may not  
8 seek the venture capital funding they need to advance  
9 to the next stage of clinical development and  
10 commercialization because if they did, they would lose  
11 this important source of research funding going  
12 forward. It is important to note that because of the  
13 significant amount of capital required to bring a new  
14 biopharmaceutical through regulatory approval to  
15 market, nearly all small business in the biotechnology  
16 sector need to obtain venture backing at some point if  
17 they are to be successful.

18 In the current economic environment,  
19 venture capitalists find it difficult to invest in  
20 early stage biotechnology companies. As Wayne Harvey  
21 pointed out, many firms no longer do so. As an  
22 industry we're shifting to later stage opportunities.  
23 Today it is only a rare exception for investments at  
24 the early stage to reap a return, and more often than  
25 not the venture capitalist loses money.



1 SBIR funding enables key translational  
2 research at this high-risk stage, helping advance  
3 technology to the point where additional private  
4 capital might be obtainable. It addresses a key  
5 bottleneck in the process of translating great science  
6 into products that improve healthcare, create jobs,  
7 and drive the U.S. economy.

8 For example, Auxeris Therapeutics is a St.  
9 Louis biotechnology company that we formed to develop  
10 technology licensed again from Washington University.  
11 RiverVest Venture Partners and Domain Associates  
12 invested in the company, which resulted in venture  
13 capital ownership of over 51 percent. Developing the  
14 technology was more difficult and took longer than  
15 investors had expected. We were unable to attract  
16 outside investors at the next round.

17 Auxeris was unable to reach the milestones  
18 necessary to obtain that additional funding and then  
19 since ceased operations. Had it been eligible for  
20 SBIR funding, Auxeris may have been able to advance  
21 the research to a stage that would've made additional  
22 private funding possible.

23 MR. WHITAKER: That's five minutes.

24 MR. NAISBITT: Is that five minutes? Let  
25 me just make one last point. Both -- I guess the

1 bottom line that I'm trying to make is that both  
2 private and public sources of financing for early  
3 stage transitional research are important, and it is  
4 not consistent with the purpose of the SBIR program to  
5 make them exclusively, mutually exclusive. You know,  
6 we recommend that we adopt a rule that addresses the  
7 actual ownership structure of small biotechnology  
8 companies, most of which are owned by a number of  
9 venture capital firms.

10 And specifically, we suggest the size  
11 requirements be revised to percent -- to permit  
12 venture capital ownership to account towards the 51  
13 percent U.S. ownership, and this will allow greater  
14 participation in the SBIR program by small biotech  
15 companies, but would not permit participation by  
16 venture-owned firms that are affiliated with large  
17 companies.

18 If these proposed changes are enacted,  
19 small businesses with ownership structures like those  
20 of companies we invest in would be able to take  
21 advantage of this important program and participate in  
22 research efforts that are critical to our nation's  
23 health, safety, and security, and it would be easier  
24 for early stage companies to raise venture capital  
25 firms from such -- firms such as ours which are

1 largely shifting to later stage investment  
2 opportunities. Thank you.

3 MR. WHITAKER: Thank you. Questions? May  
4 I have a copy of your testimony, please? Ivan James?

5 MR. JAMES: Good morning. I'm Ivan James,  
6 and I'm president of a company called United  
7 Technologies & Systems. We call ourselves UTS. We're  
8 located at 2300 Salena Street in St. Louis. My  
9 company provides paper and printed products. We have  
10 a warehouse and distribution service and manufacture  
11 and print envelopes. We're certified small  
12 disadvantaged business, and we're located in the  
13 HUBZone.

14 I want to first commend the Office of Size  
15 Standards, Small Business Administration for giving  
16 small business stakeholders an opportunity to express  
17 their views on this most important issue. I hope at  
18 the end of the process that you will consider and use  
19 the feedback you receive in redefining the definition  
20 of small business size.

21 While the present definition of standard  
22 business size varies from industry to industry, the  
23 one aspect that is common among all industry division  
24 is that the division is rather wide. For example, the  
25 size standard for the code for manufacturing of

1 envelopes is employee-based, and the standard is not  
2 to exceed 500 employees. While this standard in  
3 itself is not difficult to understand, but what is  
4 hard to comprehend is how a company with -- such as  
5 ours, which has twelve employees, can compete on a  
6 level playing field with a company of 500 employees.

7 In order to truly preserve free competition  
8 and ensure that a fair portion of our total government  
9 purchases are placed with small business enterprise, I  
10 recommend that business size standards be based on a  
11 tier size standard. This type of standard would  
12 include a combination of employee base as well as  
13 revenue base.

14 I support the 5-10-5 formula presented to  
15 the SBA earlier this year by the Minority Business  
16 subcommittee -- Summit Committee, a consortium of  
17 business advocate groups. This solution would be --  
18 need to establish a five tier structure for twenty  
19 percent of the small business falling within one of  
20 the five tiers, with the largest business being in the  
21 top tier. With a minimum level of ten percent of the  
22 average revenues as the top five corporations in that  
23 particular industry. In addition, within each tier  
24 there would have five employee-based tiers. That  
25 could be split up in different ways.

1           In calculating the number of employees, I  
2 recommend that SBA should only count full-time  
3 equivalent employees. In establishing a tier system,  
4 there will be no need for separate size standard for  
5 doing business with the federal government since the  
6 tiers would carve out opportunities for small  
7 businesses. And the small businesses will be allowed  
8 to share in the opportunity for government contracts.

9           The last point I would like to address  
10 briefly is the concept of grandfathering, that is  
11 protection for the small businesses which might be  
12 adversely impacted by a -- changes in the size  
13 standard. There are many approaches by which  
14 grandfathering could be established, but the most  
15 important thing is that it be established.

16           There are a number of other issues that  
17 time won't allow me to talk about this morning, but I  
18 do want to again thank you and the committee here for  
19 giving the small business folks here in St. Louis and  
20 in this area an opportunity to express their views,  
21 and I really appreciate that time you've given us this  
22 morning.

23           MR. WHITAKER: Thank you very much.  
24 Questions? May I have a copy of your testimony,  
25 please? Thank you, Mr. James.

1 MR. JAMES: All right.

2 MR. WHITAKER: We'll take a ten minute  
3 break.

4 (Whereupon, a recess was taken.)

5 MR. WHITAKER: We'll start the proceedings  
6 again. Is Karin Butcher ready? Karin Butcher? Eric  
7 Vickers?

8 AUDIENCE MEMBER: He's not here.

9 MR. WHITAKER: Katherine Bozoian? Hal  
10 Herweck? Larry Bullock? Bruce Fleissig? Terry  
11 Schultz? Mr. Fleissig -- are you Mr. Fleissig?

12 MR. SCHULTZ: No, I'm Terry Schultz.

13 MR. WHITAKER: Excellent.

14 MR. SCHULTZ: Good morning. My name is  
15 Terry Schultz, and I'm representing PENN Enterprises  
16 of Springfield, Missouri. Jim Penn was scheduled to  
17 be here today, but he had a crisis arise and so I'm  
18 pinch hitting. PENN Enterprises is an Army  
19 contractor. We do laundry. We do laundry under NAICS  
20 codes 81231 [sic] and 812332 at Fort Leonard Wood,  
21 Missouri; West Point, New York; and Fort Riley,  
22 Kansas.

23 We're a small business and have been since  
24 our inception in 1991. Over the years, our business  
25 has grown or shrunk with our ability to win government

1 contracts. Our employment level has reached almost  
2 200, but it's currently 120.

3 It is our position that the current SBA use  
4 of annual receipts is not only the best, but the most  
5 logical and the most auditable method for determining  
6 size. We believe that the rules are easily  
7 interpreted, easy to apply, and the accounting  
8 measures to secure the data are already in place.  
9 Changing the rule, methodology, or the metric requires  
10 all existing small businesses to modify how business  
11 is currently conducted. What is the benefit of  
12 change? What is the gain if we make the change? And  
13 if it is quantifiable, why do we exercise the entire  
14 community to make the change?

15 First, annual receipts are a metric that  
16 all businesses must maintain and report to the IRS.  
17 Therefore, accounting measures are in place to track  
18 the receipts. The results are auditable and everyone  
19 is playing by the same set of rules. Any other metric  
20 has some subjectivity and can be manipulated.

21 Changing the system requires that all  
22 companies educate themselves on the revisions, adapt  
23 accounting modifications, plus comply with any rule  
24 change. This means a hundred percent of small  
25 business community would be affected by a rules change

1 incurring unnecessary cost without benefit. Whereas  
2 only those companies desiring to newly participate in  
3 a small business program incur additional expense if  
4 there's no change to the current system. It would  
5 seem any proposed change would have to significantly  
6 improve size standard application to warrant such a  
7 broad fiscal impact.

8 In previous efforts to revise the size  
9 standard, employment levels have been suggested as an  
10 alternative to annual receipts. The problem with  
11 employment levels is there are too many variables.  
12 For example, what is the appropriate sales-to-employee  
13 conversion factor? Higher sales-per-employee reduce  
14 the number of employees allowed to be considered a  
15 small business. It promotes automation over  
16 employment and actually favors the well-financed  
17 company over start-up because capital investment  
18 dollars are limited.

19 Service industries like laundry, food,  
20 janitorial, and guard service are labor intensive and  
21 do not generate the revenue that some other businesses  
22 do. Arbitrarily establishing a sales-to-employee  
23 ratio without substantive research by NAICS code could  
24 -- adversely impacts existing small businesses. If a  
25 conversion factor is used, a sales-to-employee ratio



1 of 30 to \$35,000 is more appropriate for labor-intensive  
2 service industries than the previous proposal of  
3 \$60,000. Using this conversion factor, an employment  
4 level of 300 to 350 would result in converting when  
5 converting the twelve million dollar size standard.

6 Another problem with employment levels is  
7 defining what is an employee. During the last  
8 proposed rule change, any individual on the payroll  
9 was counted as an employee regardless of the hours  
10 worked or whether they -- the wages were even  
11 work-related. This definition was not workable as it  
12 preempted the employer's right to make fundamental  
13 decisions such as part-time or temporary employees  
14 versus overtime.

15 If employment levels are considered, it  
16 should be in terms of full-time equivalent work years.  
17 Turnover, special employment programs, seasonal or  
18 surge workloads distort employment levels when viewed  
19 solely as a number of employees. A superior  
20 perspective is gained viewing how many full-time  
21 equivalents are required rather than viewing  
22 employment based on the vagaries of workload  
23 fluctuation. Since the federal government use FTE to  
24 manage its own workforce, using another employment  
25 metric for small business seems odd.

1           The accounting period for determining size  
2 standards must be a minimum of three years.  
3 Seasonality, surge, and extraordinary workload with  
4 correspondent employment levels should be normalized  
5 or discounted in determining whether an entity  
6 qualifies as a small business. Military service  
7 contracts exemplify employment and workload variances  
8 particularly if involved with call-up and recruitment  
9 surges that are only temporary in nature.

10           MR. WHITAKER: That's five minutes.

11           MR. SCHULTZ: Okay. In conclusion, the  
12 size standard works well for the small business  
13 community. Change -- change, if any, should be  
14 limited to revising annual receipts upward to reflect  
15 inflation. Thank you for your time.

16           MR. WHITAKER: Thank you. Any questions?  
17 May I have a copy of your testimony?

18           MR. SCHULTZ: I'll give you both copies  
19 that I have.

20           MR. WHITAKER: Thank you.

21           MR. JONES: Mr. Schultz, go back to the  
22 microphone, if you would. I was visiting with  
23 Mr. Livingston at the break, and you made the point in  
24 your testimony that by using gross receipts, we all  
25 know where to go to get those numbers.

1 MR. SCHULTZ: Right.

2 MR. JONES: And that they are regularly  
3 kept for other reporting requirements. In an FTE  
4 standard, is there a way to administer that without  
5 having you as an employer have to create a new  
6 database?

7 MR. SCHULTZ: We keep that information with  
8 the number of payroll hours that we keep, and we have  
9 to report the full-time equivalents on the government  
10 contract. I can't speak for anybody but PENN  
11 Enterprises.

12 MR. JONES: Outside of the government  
13 contracting arena, and excuse my ignorance of how  
14 employee records are kept, is that -- is there an FTE  
15 count kept for the wage and hour people or for  
16 unemployment insurance, workers' compensation  
17 calculation, anything like this? Is there someplace  
18 we could pull this number now without requiring you to  
19 start a new set of records?

20 MR. SCHULTZ: I can't answer that.

21 MR. JONES: Okay. Thank you.

22 MR. WHITAKER: Thank you. Ericca Willis.

23 MS. WILLIS: Good morning. I'm Ericca  
24 Willis, and I'm director of Minority Business  
25 Development for the city of St. Louis, and I'm

1 actually here speaking on behalf of the minority  
2 business owner community. And I just wanted to put it  
3 on record to say that to increase size standards  
4 actually opens up more opportunities for minority  
5 business owners to be more competitive as it relates  
6 to federal procurement.

7 I am also here to suggest maybe a tiered  
8 system where were the standards are increased, that  
9 minority businesses are able to compete on a bidding  
10 level commiserate with other companies in that same  
11 tier. For instance, if the size standards are raised  
12 to a million dollars, then those same companies  
13 aren't -- or say the five million dollar companies  
14 aren't competing with companies that have revenues of,  
15 say, 3 to \$500,000, where in the tiered system where  
16 they can actually bid up, but no one can bid down to  
17 help level the playing field, as I said, as it relates  
18 to federal procurement opportunities with minority  
19 businesses. Did you have any questions? That was  
20 basically my testimony.

21 MR. WHITAKER: Okay.

22 MR. JONES: Thanks very much.

23 MR. WHITAKER: Do you have a copy of your  
24 testimony?

25 MS. WILLIS: No, I don't. I'm sorry.

1 MR. WHITAKER: Katherine Bozoian.

2 MS. BOZOIAN: Hi. I'm Katherine Bozoian,  
3 president and owner of Bozoian Group Architects. My  
4 firm consists of four people and we consider ourselves  
5 small business. Yet I find that the cutoff basically  
6 for architects to be considered -- or architectural  
7 firms be considered small business is four million  
8 dollars in receipts. Well, I have to tell you that  
9 according to the national AIA, American Institute of  
10 Architects, this institution goes around and  
11 constantly interviews architects, architectural firms,  
12 how large are you, how many people do you employ, what  
13 are your salary ranges, what have you.

14 They report that a third of the  
15 architectural firms in the United States are sole  
16 practitioners, one-man outfits. That means they can  
17 have a -- they can have gross receipts up to four  
18 million dollars a year. Now, I would like that job.  
19 It's just not practical. A four-man firm such as  
20 myself in a very, very good year, and that's with a  
21 team of consultants that are working for me, if we  
22 pull in just under a million dollars a year, it's a  
23 fantastic year and everyone is doing well. So I feel  
24 this dollar amount of four million dollars to be  
25 considered small firm is way out of proportion.

1           They also report that of the total  
2 billings, of the total dollars that people in the  
3 United States spend on architectural design services,  
4 that firms with a hundred or more employees, which are  
5 very, very large firms, they account for two percent  
6 of the firms in the United States, yet they have  
7 almost half of the billings that the nation spends on  
8 architectural services.

9           On the other hand, sole practitioners,  
10 remember one-third of the firm sizes in this nation,  
11 account for two percent of the total billings in this  
12 nation. And just going back to, you know, SBA's  
13 website and their objectives to see that dollars that  
14 are awarded in the name of small business go to small  
15 business, I have to report that I just don't feel like  
16 they're going there in my professional opinion. And  
17 that's my testimony.

18           MR. JONES: Do you have a suggested dollar  
19 threshold?

20           MS. BOZOIAN: I would suggest a million,  
21 and I suggest that, again, because we're a four-man  
22 outfit and that's with like a team of consultants,  
23 mechanical engineers, civil engineers, surveyors, what  
24 have you, and when we have general -- our gross  
25 receipts are just under a million, everyone is doing

1 very, very well, and these are, you know, three- to  
2 six-man type firms. I have lost projects to firms  
3 that -- you know, like when everyone submits. We're  
4 not -- we don't get our work by -- what's the word --  
5 bidding.

6 We're based on quality selection and then  
7 our fees have to be just in line with the industry,  
8 and then if they're not they go to the second, their  
9 second choice. And there are firms that were selected  
10 work as a small business that blow me away. They're  
11 large outfits. They've got floors and floors in  
12 buildings and, you know, fifty, sixty people working  
13 for them. That's a large firm. Anything really in  
14 architectural profession, anything over twelve to  
15 twenty you're getting into midsize, large firms.

16 MR. JONES: How about an employment  
17 threshold, what would you think would be the -- on an  
18 FTE equivalent, what would you think would be in your  
19 mind the dividing line between large and small?

20 MS. BOZOIAN: You mean the number of  
21 employees?

22 MR. JONES: Yes, ma'am.

23 MS. BOZOIAN: Going on what the local AIA  
24 tells me and the national AIA tells me, I would say  
25 eight to twelve is medium size. So anything from

1 eight under would be considered small. Anything from  
2 twelve over would be large. To just kind of give you  
3 an idea of what a four-man firm can produce in the way  
4 of construction, design construction, we can handle  
5 eight million dollars worth of construction without  
6 having to add staff. And many times I think the  
7 public have a perception that they have like an eight  
8 million dollar job, they have to have a forty-man firm  
9 and all forty guys working on it. When in fact  
10 something like a four to six million dollar job has  
11 two to three architects working on it and that's it,  
12 no matter what the size of the firm.

13 MR. JONES: Would your eight to twelve  
14 employee threshold, that wouldn't be professional  
15 licensed people. That would be those plus the support  
16 people within the firm?

17 MS. BOZOIAN: Well, no, I think you'd have  
18 to define support. If a firm has a clerical person  
19 who is not actually helping produce the work, that is  
20 they're not doing AutoCAD drawings and what have you,  
21 that they shouldn't be counted towards that. I have  
22 someone who works for me who does not have a  
23 professional license and will not because they haven't  
24 gone through the formal educational process, but  
25 they're one of the topnotch designers that we have.



1           They've gone through technical training,  
2           and I would not consider them clerical or support.  
3           They're very much a critical part of the team. So  
4           many times in architectural proposals you'll see them  
5           listed as architectural technicians or designers, not  
6           necessarily licensed, but they're very, very good at  
7           what they do. Those should be counted as a member of  
8           the firm that actually helps design and produce the  
9           work, not support the people doing the work.

10           MR. JONES: Thank you.

11           MS. BOZOIAN: Okay. Thank you. I  
12           appreciate it very, very much.

13           MR. WHITAKER: Wayne Harvey?

14           AUDIENCE MEMBER: He already came up.

15           MR. WHITAKER: Antonio Maldonado? Tim  
16           Breding?

17           MR. LIVINGSTON: We actually took our name  
18           off the list of audience members.

19           MR. WHITAKER: We've got you down. Is  
20           there anybody here who has registered to testify that  
21           has not yet had an opportunity to testify? So if  
22           there's no one else here to testify, I'm going to turn  
23           the meeting, or the hearing that is, back to Sam Jones  
24           for closing remarks.

25           MR. JONES: Let me conclude today by again

1     thanking you for participating in today's hearings. I  
2     assure you that SBA will carefully study the testimony  
3     you have heard today. Deliberations on new size  
4     standard policy -- on a new size standard policy will  
5     commence at the close of the final hearing and a new  
6     policy proposed as quickly as possible. The public  
7     will have an opportunity to comment on any specific  
8     proposals we issue in the future.

9             Gary, give us an idea of the balance of the  
10    schedule. Over the next six weeks or so you're  
11    holding the other ten hearings?

12            MR. JACKSON: The hearings are scheduled  
13    through the month of June. The other hearing today  
14    started in Seattle a few hours ago, and we'll run  
15    hearings until June 29th, the last one in Los Angeles.  
16    Again, they're throughout the country, and as soon as  
17    we conclude that we'll try to focus on summarizing the  
18    comments, reviewing the testimony, and developing  
19    ideas for future proposals.

20            MR. JONES: Thank you. Your participation  
21    will help us do a better job for you at SBA, and we  
22    thank you for attending, and have a great day. We're  
23    adjourned.

24            (Whereupon the hearing was concluded at  
25    10:36 a.m.)

1 CITY OF ST. LOUIS )  
 SS. )  
 2 STATE OF MISSOURI )  
 3

4 NOTARIAL CERTIFICATE

5 I, WILLIAM L. DEVRIES, Certified Court  
 Reporter and a duly commissioned Notary Public within  
 6 and for the City of St. Louis, State of Missouri, do  
 hereby certify that there came before me at the St.  
 7 Louis Community College at Florissant Valley,  
 Florissant, Missouri, this  
 8

9 SIZE STANDARDS PUBLIC HEARING.  
 10

11 I further certify that the said public  
 hearing was reduced to writing by me. This record is  
 12 a true and correct record of the testimony given at  
 the hearing.

13 I further certify that I am neither attorney  
 nor counsel for nor related nor employed by any of the  
 14 parties to the action in which this hearing is taken;  
 further, that I am not a relative or employee of any  
 15 attorney or counsel employed by the parties hereto or  
 financially interested in this action.  
 16

17 IN WITNESS WHEREOF, I have hereunto set my  
 hand and seal this 6th day of June, 2005.

18 My commission expires May 30, 2006.  
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22 \_\_\_\_\_  
 [NOTARY PUBLIC]  
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